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19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA

21 ROBERT A. BUTLER,

22 Plaintiff,

23 v.

24 GOLDSMITH & HULL, APC, and
25 HARVEST CREDIT MANAGEMENT
26 VII, LLC,

27 Defendants.

FILED

10 MAY 27 AM 9:51

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

10CV 1144H NLS
CASE NO. 10 CV _____

COMPLAINT FOR DAMAGES FOR
VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT
and FOR RELATED STATE LAW
CLAIM

JURY TRIAL DEMANDED

28 JURISDICTION AND VENUE

1. This is a claim for damages arising under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (FDCPA), the California Rosenthal Fair Debt Collection Practices Act (Rosenthal Act), by these Defendants and their employees and agents. These acts were part of the Defendants' illegal efforts to collect a consumer debt from Plaintiff. This court has

1 jurisdiction by reason of 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and by
2 reason of 28 U.S.C. § 1367 for supplemental state law claims.

3 2. Venue is proper in this District in that the acts and transactions occurred here, Plaintiff
4 resides here, and Defendants transact business here.

5 3. Supplemental jurisdiction is appropriate in that the action for illegal debt collection
6 practices alleged in Count One arising under FDCPA is so related to the action for violation
7 of the California Rosenthal Act, California Civil Code §§ 1788-1788.32, alleged in Count
8 Two, as to form part of the same case or controversy under Article III of the United States
9 Constitution. The Rosenthal Act claim in Count Two does not raise novel or complex issues
10 of state law, or substantially predominates over the FDCPA claim in Count One. No other
11 compelling reasons exist for the court to decline jurisdiction over the Rosenthal Act claim.
12

13 PARTIES

14

15 4. Plaintiff is a natural person who resides in the City of San Diego, County of San
16 Diego, State of California, and is a consumer as that term is defined by 15 U.S.C. § 1692a(3),
17 and is a person affected by a violation of the FDCPA with standing to bring a claim under
18 15 U.S.C. § 1692k and California Civil Code § 1788.30.

19 5. Defendant HARVEST CREDIT MANAGEMENT VII, LLC is a Colorado Corporation and
20 a collection agency operating from an address of 1580 Lincoln Street, Denver, Colorado
21 80203, does business in California, and is a debt collector as that term is defined by 15
22 U.S.C. §§ 1692a(2) and California Civil Code § 1788.2.

23 6. Defendant GOLDSMITH & HULL, APC, is a law firm incorporated in the State of
24 California, operating from an address of 16933 Parthenia Street, Suite 110, Northridge,
25 California 91343, does business in California, and is a debt collector as that term is defined
26 by 15 U.S.C. §§ 1692a(2) and California Civil Code § 1788.2.

27 //

28 //

FACTUAL ALLEGATIONS

7. On various dates before June 2009, Plaintiff incurred a financial obligations which were primarily for personal, family or household purposes. It is therefore a debt as that term is defined by 15 U.S.C. § 1692a(5) and California Civil Code § 1788.2.

8. Sometime later, the debt was sold, assigned, placed, or otherwise transferred to Defendants HARVEST CREDIT and GOLDSMITH & HULL for collection from Plaintiff.

June 29, 2009, Letter

9. Defendant Goldsmith & Hull, acting as counsel for defendant HARVEST CREDIT sent a letter to Plaintiff (attached as Exhibit A), claiming a judgment for \$6,795.92, plus interest and costs after judgment. The letter appears on GOLDSMITH & HULL's letterhead and is signed by GOLDSMITH & HULL, A Professional Corporation, by Cesar Camarena, Legal Case Coordinator."

10. The letter further contains a number of explicit legal terms and phrases, all referring to a prior judgment and to the remedies under consideration by HARVEST CREDIT and GOLDSMITH & HULL. A "least sophisticated consumer" would reasonably infer and believe this letter was sent by an attorney.

11. At no place in the letter does GOLDSMITH & HULL or HARVEST CREDIT indicate this letter is not written by or on behalf of an attorney, nor does it state that no attorney has reviewed the file or drafted the letter.

12. The letter therefore violates the Fair Debt Collection-Practices Act, and in particular 15 U.S.C. § 1692e(3) which includes in the Act's listing of prohibited "false, deceptive, or misleading representation or means in connection with the collection of any debt . . . [¶] (3) The false representation or implication that any individual is an attorney or that any communication is from an attorney." By violating the federal Fair Debt Collection Practices

1 Act, it also violates the California Rosenthal Fair Debt Collection Practices Act, and in
2 particular, Civil Code § 1788.17.

3
4 ***Damages***
5

6 13. Plaintiff has suffered actual damages as a result of these illegal collection
7 communications by these defendants in the form of anger, anxiety, emotional distress, fear,
8 frustration, upset, humiliation, embarrassment, among other negative emotions.

9
10 ***Respondeat Superior Liability***
11

12 14. The acts and omissions of Defendants' employees and agents employed by Defendants
13 HARVEST CREDIT and GOLDSMITH & HULL, and each of them, were committed within the
14 course and scope of their employment of their employers Defendants HARVEST CREDIT and
15 GOLDSMITH & HULL, or of their actual or apparent authority from their principals,
16 Defendants HARVEST CREDIT and GOLDSMITH & HULL

17 15. Defendants HARVEST CREDIT and GOLDSMITH & HULL authorized or approved the
18 acts and omissions by HARVEST CREDIT and GOLDSMITH & HULL's employees and agents
19 and each of them, in advance.

20 16. Defendants HARVEST CREDIT and GOLDSMITH & HULL ratified the acts and omissions
21 committed by HARVEST CREDIT and GOLDSMITH & HULL's employees and agents and each
22 of them.

23 17. Defendants HARVEST CREDIT and GOLDSMITH & HULL is therefore liable to Plaintiff
24 through the doctrine of respondeat superior for the intentional and negligent acts, errors, and
25 omissions done in violation of state and federal law by its agents and employees.

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TRIAL BY JURY

18. Plaintiff is entitled to and hereby respectfully demands a trial by jury on all issues so triable. U.S. Constitution, amend. 7; Fed.R.Civ.P. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 et seq.

19. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

20. The foregoing acts and omissions of each and every Defendant and their agents constitute numerous violations of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq., with respect to Plaintiff.

21. As a result of each and every Defendants' violations of the FDCPA, Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3), from each and every Defendants herein.

COUNT II.

VIOLATIONS OF THE CALIFORNIA ROSENTHAL ACT

California Civil Code §§ 1788-1788.33

22. Plaintiff incorporates by reference paragraphs 1- 21 of this Complaint.

23. This acts and omissions of each and every Defendant and their agents constitute numerous violations of the California Rosenthal Act, including, but not limited to the above-

1 cited provisions of the Rosenthal Act, California Civil Code §§ 1788-1788.33, with respect
2 to Plaintiff. Further, these acts were done willfully and knowingly in violation of the
3 Rosenthal Act.

4 24. As a result of each and every Defendant's violations of the FDCPA, Plaintiff is
5 entitled to actual damages pursuant to California Civil Code § 1788.30(a), statutory damages
6 in an amount up to \$1,000.00 pursuant to California Civil Code § 1788.30(b), and reasonable
7 attorney's fees and costs pursuant to California Civil Code § 1788.30(c), from each and every
8 Defendant.

9
10 **PRAYER FOR RELIEF**
11

12 **WHEREFORE**, Plaintiff prays that judgment be entered against each and every Defendant
13 for:

14 1. An award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) and pursuant to
15 California Civil Code § 1788.30(a), against each and every Defendant and for each Plaintiff;

16 2. An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A)
17 against each and every Defendant and for each Plaintiff;

18 3. An award of statutory damages of \$1,000.00 pursuant to California Civil Code
19 § 1788.30(b) against each and every Defendant; and

20 4. An award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C.
21 § 1692k(a)(3) and pursuant to California Civil Code § 1788.30(c), against each and every
22 Defendant.

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1 5. An award of actual damages from each and every Defendant for the emotional distress
2 suffered as a result of the intentional and negligent FDCPA violations in an amount to be
3 determined at trial;

4 6. Costs of suit; and

5 7. And such other and further relief as to this court may seem just and proper.

6 Respectfully submitted,
7 Dated: April 16, 2010

CHRISTISON LAW FIRM,
RECORDON & RECORDON, and
ROONEY & LICKEL

8
9 By: 

10 Randall B. Christison
11 Lead Attorney
12 Attorneys for Plaintiff
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Court Name: USDC California Southern
Division: 3
Receipt Number: CAS013976
Cashier ID: bhartman
Transaction Date: 05/27/2010
Payer Name: RECORDON AND RECORDON

CIVIL FILING FEE

For: BUTLER V GOLDSMITH AND HULL
Case/Party: D-CAS-3-10-CV-001144-001
Amount: \$350.00

CHECK

Check/Money Order Num: 10153
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Robert A Butler

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Randall B. Christison Christison Law Firm 707 Broadway, Suite
1800 San Diego, CA 92101-5314 619.233.3200

DEFENDANTS

2010 MAY 27 AM 9:49
GOLDSMITH & HULL, APC,
HARVEST CREDIT MANAGEMENT
CLERK OF DISTRICT COURT
COUNTY OF SAN DIEGO, CALIFORNIA

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

10CV 1144H

NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1692

Brief description of cause:
Violation of Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/14/2010

SIGNATURE OF ATTORNEY OF RECORD

Randall B. Christison

FOR OFFICE USE ONLY

RECEIPT # 13976

AMOUNT \$350

APPLYING IFP

JUDGE

MAG. JUDGE